

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	CIV-ZLOCH
)	CASE NO. 96-6112
Plaintiff,)	
)	Entered: May 2, 1996
v.)	
)	Filed: May 2, 1996
SCUBA RETAILERS ASSOCIATION, INC.,)	CARLOS JUENKE
)	CLERK U.S. DIST. CT.
Defendant.)	S.D. OF FLA. FT. LAUD.
)	
)	<u>DEFAULT FINAL JUDGMENT</u>

WHEREAS plaintiff, United States of America, having filed its Complaint in this action on January 30, 1996, and defendant having failed to plead or otherwise defend this action,

IT IS HEREBY ADJUDGED as follows:

I
JURISDICTION

This Court has jurisdiction over the subject matter of this action, and over the person of the defendant, Scuba Retailers Association, Inc. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II
DEFINITIONS

As used in this Final Judgment:

A. "Defendant" means the Scuba Retailers Association,

Inc., and its affiliates, successors and assigns, directors, officers, managers, agents, and employees, and any other person acting for or on behalf of them.

B. "Scuba diving" means surface and underwater aquatic sport diving.

C. "Scuba diving equipment" means products used to facilitate surface and underwater aquatic sport diving, including, but not limited to, any self-contained underwater breathing apparatus, underwater gauges, dive computers, flotation and buoyancy control vests, underwater lights, wetsuits, face masks, snorkels, fins, and other similar or allied equipment.

D. "Mail-order dealer" means any person who has sold or proposes to sell scuba diving equipment to consumers other than at a retail location and engages in the mail-order sale or advertising of scuba diving equipment, the direct distribution of scuba diving equipment, or the retail price advertising of scuba diving equipment.

E. "Person" means any individual, association, cooperative, partnership, corporation, or other business or legal entity.

III APPLICABILITY

This Final Judgment shall apply to defendant and to each of its officers, directors, agents, employees, affiliates, subsidiaries, and successors and assigns, and to all other

persons in active concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV
PROHIBITED CONDUCT

Defendant is enjoined and restrained from:

A. Taking any action to encourage, advise, recommend, or require any person to sell its product only through retail dive stores;

B. Taking any action to arrange, advance, establish, implement, encourage, or enforce any refusal to deal with any mail order dealer;

C. Preventing, or attempting to prevent, any mail order dealer from obtaining access to mailing lists, advertising space, corporate sponsorships, trade shows, trade associations, or other means of marketing or selling scuba diving equipment;

D. Preventing, or attempting to prevent, any mail-order dealer from obtaining access to sources of supply of scuba diving equipment for resale; and

E. Directly or indirectly adopting, disseminating, publishing, or seeking adherence to any rule, bylaw, resolution, policy, guideline, standard, objective, or statement made or ratified by an officer, director, or other official of defendant that has the purpose or effect of advocating or encouraging any of the practices identified in Sections IV(A)-(D) above.

V
LIMITING CONDITIONS

A. Nothing in Section IV shall prohibit defendant from unilaterally declining to deal with any mail-order dealer for bona fide reasons; provided, the burden shall be on defendant to prove in any enforcement proceeding initiated by plaintiff that any such decision by defendant was made unilaterally and for bona fide reasons, and was not anti-competitive in purpose or nature.

B. Nothing in Section IV(C) of the Final Judgment shall require defendant to alter its policy of not selling; trading exchanging, or otherwise making available its list of member names.

C. Nothing in Section IV(A)-(E) of the Final Judgment shall prohibit any individual retailer of scuba diving equipment, acting alone and not on behalf of defendant or in concert with any other retailer of scuba diving equipment, from unilaterally declining to deal with any mail-order dealer or mail-order product.

VI
COMPLIANCE

A. Defendant is ordered to establish and maintain an antitrust compliance program to ensure that it complies with this Final Judgment. The defendant shall do the following:

1. Distribute within ninety (90) days from entry of this Final Judgment, a copy of this Final Judgment to all

officers, directors, and members of defendant, and any person who serves as Executive Director of defendant or otherwise manages defendant; and

2. Distribute in a timely manner a copy of this Final Judgment to any officer or director who succeeds to a position described in Section VI(A)(1).

B. If defendant learns of any violations of this Final Judgment, defendant shall forthwith take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment.

VII PLAINTIFF ACCESS

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the plaintiff shall, upon written request by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted:

1. Access during the defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview the defendant's officers, employees, or agents, who may

have counsel present, regarding any such matters.

B. Upon the written request by the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VII
RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final

Judgment, to modify or terminate any of its provisions, to enforce

compliance herewith, and to punish any violations of its provisions. Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

IX
TERM

This Final Judgment will expire on the tenth anniversary of its date of entry.

To the extent not otherwise disposed of herein, all pending motions are hereby **DENIED** as moot.

ADJUDGED in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of May, 1996.

_____/s/_____
WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

Richard E. Reed, Esq.
For Plaintiff

James R. Estabrook
Executive Director

Scuba Retailers Association
4 Florence Street
Somerville, Massachusetts 02145